

AMENDED IN ASSEMBLY SEPTEMBER 5, 2001

AMENDED IN SENATE MAY 14, 2001

AMENDED IN SENATE APRIL 18, 2001

AMENDED IN SENATE APRIL 2, 2001

SENATE BILL

No. 1027

Introduced by Senator Romero

February 23, 2001

An act to amend Sections 514, 554, and 558 of, and to add Sections 518 and 519 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1027, as amended, Romero. Employment: overtime requirements: nurses and health care employees.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Employees covered by a valid collective bargaining agreement are, under certain circumstances, exempt from these requirements. Existing law also authorizes the adoption by $\frac{2}{3}$ of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

This bill would provide that a registered nurse employed to engage in the practice of nursing or an employee in the health care industry may not be compelled to work more than 40 hours in a workweek. If the nurse or employee in the health care industry is working under an alternative workweek schedule, he or she may not be required to work in excess of the workday hours provided in the alternative workweek

schedule. If the nurse or employee in the health care industry is not working under an alternative workweek schedule, he or she may not be required to work more than 8 hours in a workday.

This bill would further provide, however, that a registered nurse or employee in the health care industry may be compelled to work overtime if a federal, state, or county declaration of a state of emergency is in effect, provided that the employer makes reasonable efforts to fill staffing needs through alternative means. The bill would also provide that the overtime prohibition does not apply if a catastrophic event occurs in a community served by a health care facility and specified conditions are met.

This bill would prohibit an employer from coercing a registered nurse or employee in the health care industry to work overtime, or from retaliating or discriminating against the nurse or employee for refusing to work overtime. An employer violating the provisions of this bill would be subject initially to a \$50 civil penalty for each hour or fraction thereof that a registered nurse or employee in the health care industry is required to work overtime. Subsequent violations would subject the employer to a civil penalty of \$100 for each hour or fraction thereof that a registered nurse or employee in the health care industry is required to work overtime.

This bill would require the Industrial Welfare Commission to adopt wage orders consistent with the bill.

The bill would *provide that its provisions do not apply to nurse midwives, nurse anesthetists, or nurse practitioners, as provided, nor may its provisions be construed to affect the Nursing Practice Act or a nurse's duty under the standards of competent performance, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 514 of the Labor Code is amended to
- 2 read:
- 3 514. Except as provided in Section 518, this chapter does not
- 4 apply to an employee covered by a valid collective bargaining
- 5 agreement if the agreement expressly provides for the wages,
- 6 hours of work, and working conditions of the employees, and if the
- 7 agreement provides premium wage rates for all overtime hours



1 worked and a regular hourly rate of pay for those employees of not
2 less than 30 percent more than the state minimum wage.

3 SEC. 2. Section 518 is added to the Labor Code, to read:

4 518. (a) A registered nurse who is employed to engage in the
5 practice of nursing, or an employee in the health care industry, who
6 is working under an alternative workweek schedule adopted
7 pursuant to Section 511, adopted pursuant to a collective
8 bargaining agreement under Section 514, or adopted pursuant to
9 regulations adopted by the Industrial Welfare Commission under
10 subdivision (b) of Section 517, may not be required to perform any
11 work in excess of the workday hours provided in the alternative
12 workweek schedule. A registered nurse who is employed to
13 engage in the practice of nursing, or an employee in the health care
14 industry, who is not working under an alternative workweek
15 schedule may not be required to perform any work in excess of
16 eight hours in a workday. A registered nurse who is employed to
17 engage in the practice of nursing, or an employee in the health care
18 industry, whether or not working pursuant to an alternative
19 workweek schedule, may not be required to perform any work in
20 excess of 40 hours in a workweek.

21 (b) This section applies to a registered nurse, or an employee
22 in the health care industry, working for a private employer and to
23 a registered nurse, or an employee in the health care industry,
24 working for a public employer, including the state.

25 (c) This section does not apply when a federal, state, or county
26 declaration of a state of emergency is in effect in the county in
27 which the registered nurse, or the employee in the health care
28 industry, practices.

29 (d) (1) This section does not apply if a catastrophic event
30 occurs in a community served by a health care facility and both of
31 the following factors apply:

32 (A) The catastrophic event results in such a large number of
33 patients in need of immediate medical treatment that the health
34 care facility is incapable of providing sufficient registered nurses
35 or health care employees to attend to the patients without resorting
36 to mandatory overtime.

37 (B) The catastrophic event is an unanticipated and
38 nonrecurring event.

39 (2) A seasonal or predicted increase in health care patients does
40 not qualify as a catastrophic event for purposes of this subdivision.

(3) A health care employer who determines that the conditions of this subdivision have been met and who requires mandatory overtime pursuant to this section shall immediately notify the local county health authority and any labor organization representing affected health care employees of that determination.

(e) An employer may require a registered nurse or an employee in the health care industry to work overtime under subdivision (c) only after the employer has made reasonable efforts to fill its staffing needs through alternative means, including requesting off-duty registered nurses or employees in the health care industry to voluntarily report to work, requesting on-duty nurses or employees in the health care industry to voluntarily work overtime, and recruiting per diem and registry nurses or employees in the health care industry to report to work.

(f) Subdivision (c) does not apply to a state of emergency declaration resulting from a labor dispute in the health care industry.

(g) This section does not apply to a registered nurse who is exempt from overtime as an executive or administrative employee pursuant to subdivision (f) of Section 515.

(h) Nothing in this section prohibits a registered nurse or an employee in the health care industry from voluntarily working overtime.

(i) An employer shall not retaliate or discriminate against a registered nurse or an employee in the health care industry for refusing to work overtime. An employer shall not coerce a registered nurse or an employee in the health care industry into surrendering his or her rights under this section.

(j) The Industrial Welfare Commission shall, at a public hearing, adopt wage orders consistent with this section without convening wage boards, which orders shall be final and conclusive for all purposes.

(k) *Nothing in this section shall be construed to affect the Nursing Practice Act (Chapter 6 of Division 2 (commencing with Section 2700) of the Business and Professions Code) or a registered nurse's duty under the standards of competent performance.*

SEC. 3. Section 519 is added to the Labor Code, to read:

519. Section 518 does not apply to the following categories of advanced practice nurses:

1 (a) A nurse midwife certified pursuant to Section 2746 of the
2 Business and Professions Code, who is primarily engaged in
3 performing the duties of a nurse midwife.

4 (b) A nurse anesthetist certified pursuant to Section 2830 of the
5 Business and Professions Code, who is primarily engaged in
6 performing the duties of a nurse anesthetist.

7 (c) A nurse practitioner who meets the standards established by
8 the Board of Registered Nursing pursuant to Section 2836 of the
9 Business and Professions Code, who is primarily engaged in
10 performing the duties of a nurse practitioner.

11 SEC. 4. Section 554 of the Labor Code is amended to read:

12 554. (a) Sections 551 and 552 shall not apply to any cases of
13 emergency nor to work performed in the protection of life or
14 property from loss or destruction, nor to any common carrier
15 engaged in or connected with the movement of trains. This
16 chapter, with the exception of Section 558, shall not apply to any
17 person employed in an agricultural occupation, as defined in Order
18 No. 14-80 (operative January 1, 1998) of the Industrial Welfare
19 Commission, nor shall the provisions of this chapter, except for
20 Section 518, apply when the employer and a labor organization
21 representing employees of the employer have entered into a valid
22 collective bargaining agreement pursuant to Section 514. Nothing
23 in this chapter shall be construed to prevent an accumulation of
24 days of rest when the nature of the employment reasonably
25 requires that the employee work seven or more consecutive days,
26 providing that in each calendar month the employee receive days
27 of rest equivalent to one day's rest in seven. The requirement
28 respecting the equivalent of one day's rest in seven shall apply,
29 notwithstanding the other provisions of this chapter relating to
30 collective bargaining agreements, where the employer and a labor
31 organization representing employees of the employer have entered
32 into a valid collective bargaining agreement respecting the hours
33 of work of the employees, unless the agreement expressly provides
34 otherwise.

35 (b) In addition to the exceptions provided in subdivision (a),
36 the Chief of the Division of Labor Standards Enforcement may,
37 when in his or her judgment hardship will result, exempt any
38 employer or employees from the provisions of Sections 551 and
39 552.

1 (c) *Nothing in this section shall be construed to affect the*
2 *Nursing Practice Act (Chapter 6 of Division 2 (commencing with*
3 *Section 2700) of the Business and Professions Code) or a*
4 *registered nurse's duty under the standards of competent*
5 *performance.*

6 SEC. 5. Section 558 of the Labor Code is amended to read:

7 558. (a) Any employer or other person acting on behalf of an
8 employer who violates, or causes to be violated, a section of this
9 chapter or any provision regulating hours and days of work in any
10 order of the Industrial Welfare Commission shall be subject to a
11 civil penalty as follows:

12 (1) Except as provided in paragraph (3), for any initial
13 violation, fifty dollars (\$50) for each underpaid employee for each
14 pay period for which the employee was underpaid, in addition to
15 an amount sufficient to recover underpaid wages.

16 (2) Except as provided in paragraph (4), for each subsequent
17 violation, one hundred dollars (\$100) for each underpaid
18 employee for each pay period for which the employee was
19 underpaid, in addition to an amount sufficient to recover underpaid
20 wages.

21 (3) For any initial violation of Section 518, fifty dollars (\$50)
22 for each hour or fraction of an hour for each registered nurse or
23 employee in the health care industry who is required to work
24 overtime.

25 (4) For any subsequent violation of Section 518, one hundred
26 dollars (\$100) for each hour or fraction of an hour for each
27 registered nurse or employee in the health care industry who is
28 required to work overtime.

29 (5) Wages recovered pursuant to this section shall be paid to the
30 affected employee.

31 (b) If upon inspection or investigation the Labor
32 Commissioner determines that a person had paid or caused to be
33 paid a wage for overtime work in violation of any provision of this
34 chapter, or any provision regulating hours and days of work in any
35 order of the Industrial Welfare Commission, the Labor
36 Commissioner may issue a citation. The procedures for issuing,
37 contesting, and enforcing judgments for citations or civil penalties
38 issued by the Labor Commissioner for a violation of this chapter
39 shall be the same as those set out in Section 1197.1.

1 (c) The civil penalties provided for in this section are in
2 addition to any other civil or criminal penalty provided by law.

3 (d) *Nothing in this section shall be construed to affect the*
4 *Nursing Practice Act (Chapter 6 of Division 2 (commencing with*
5 *Section 2700) of the Business and Professions Code) or a*
6 *registered nurse's duty under the standards of competent*
7 *performance.*

